IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.Rev.Pet.No. 449 of 1999()

CRA.115/1994 of ADDL.SESSIONS COURT, KOTTAYAM
CC.526/1991 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

REVN. PETITIONER - APPELLANT - ACCUSED:

SAJU, S/O. STEPHAN, NEERALAKATTUTHUNDIYIL HOUSE, KOTHANALLOOR P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

RESPONDENTS - RESPONDENT - COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI AKBAR K.A.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 449 OF 1999

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Dated this the 24th day of January, 2007

O R D E R

Accused in C.C. No.526 of 1991 on the file of the Judicial First Class Magistrate, Vaikom is the revision petitioner. Revision petitioner was found guilty of offences punishable under Sections 279 and 338 IPC. He was convicted and sentenced to undergo rigorous imprisonment for 3 months and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for 15 days under Section 279 IPC. For the offence under Section 338 IPC, revision petitioner was sentenced to undergo rigorous imprisonment for 3 months and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for 15 days. Sentences were directed to run concurrently. Challenging that conviction and sentences, petitioner filed Crl. Appeal No.115 of 1994 before the Sessions Court, Kottayam. Learned Sessions Judge concurred with the findings of the learned Magistrate and dismissed the appeal. Hence this Criminal Revision Petition.

2. Petitioner, who was a driver by profession, was driving a lorry bearing registration No.KLA-8510 at about 7.30 p.m. on 28.5.1991. He was negotiating the vehicle on a descend from south to north. Prosecution case was that lorry went to the extreme wrong side of the road and hit against a mud wall, which is situated one meter east of the road. P.W.7, who was the injured in the case, was standing near the mud wall. He was sandwitched between the lorry and the mud wall. The right front tyre of the lorry run over the left leg of P.W.7 causing fracture. Immediately he was taken to the hospital. While undergoing treatment, P.W.7 gave Exhibit P1 first information statement. Based on that first information statement crime, 324/TR/91 was registered by the Gandhinagar police under Sections 279 and 338 IPC. The case was subsequently transferred to Kaduthuruthy police and they re-registered Exhibit P5 first information report in Crime No.174 of 1991. Further investigation was conducted and final report was filed. When the petitioner appeared before the Magistrate, copies of relevant documents were furnished to revision petitioner. Substance of accusation was read over and

explained to him. He understood the same and pleaded not guilty. On the side of prosecution, P.Ws.1 to 13 were examined and Exhibits P1 to P6 proved and marked. After prosecution evidence was over, petitioner was questioned under Section 313 of Criminal Procedure Code. He denied all the incriminating circumstances brought out against him. But no defence evidence was adduced. Learned Magistrate found the petitioner guilty of the offences charged, convicted and sentenced him as aforesaid. Those conviction and sentences were confirmed in appeal by the learned Sessions Judge. Hence this Criminal Revision Petition.

3. Learned counsel for the petitioner strenuously argued before me that both the courts failed to consider the evidence in the real perspective. It was argued that a perusal of the scene mahazar shows that at the place of accident the road is descending from south to north. It was pointed out that a reading of scene mahazar indicates that there is a small curve in the road and after negotiating the curve again the driver will have to ascend the vehicle. The material on record shows that there was heavy rain and while going down and negotiating the curve,

drivers will lose control of the vehicle. Material on record also shows that the vehicle was gone to the wrong direction as one of its tyres was in trouble. P.W.3 in his evidence deposed that there was rain. Counsel further submitted that all the witnesses gave statements before the police that there was heavy rain and when the vehicle which was going down descend negotiating a curve and while the driver applied the brake he lose the control and the vehicle went off the road and the incident took place. Evidence on record shows that all the incident witnesses turned hostile. P.W.3 had admitted that there was rain at that time. Though P.W.6 turned hostile, he also admitted that there was rain. But he denied having given a statement before the police that the accident occurred due to the skidding of the vehicle. P.W.6 had admitted that when the driver applied the brake there was skidding and the vehicle went off the road. P.W.7, injured, in his cross-examination asserted that there was no rain. But he had admitted that the vehicle in question was negotiating a descend. He had also admitted that the vehicle went off the road and it moved few feet with a tyre with trouble on the side of

the road. He had further admitted that the first person to carry him from the place of incident to the hospital was the petitioner. He had prior acquaintance with the petitioner. So it is evidently clear that incident occurred due to the condition of the road also. But in view of the material on record that there was negligence on the part of the petitioner, I do not think it a fit case where the petitioner can be acquitted. But considering the entire facts and circumstances of the case, I am of the view that the substantive sentences imposed by both courts can be set aside. But I do not find any reason to modify the fine imposed and the default sentence thereof. In the result Criminal Revision Petition is disposed of in the following manner:

The findings of the courts below that petitioner is guilty of the offences punishable under Sections 279 and 338 IPC are confirmed. Conviction is also confirmed. But the sentences imposed are modified. The substantive sentences of 3 months' rigorous imprisonment under Sections 279 and 338 IPC are set aside. Petitioner is directed to pay a fine of Rs.1,000/- each under Sections 279 and 338 IPC and in default in payment of fine to

undergo simple imprisonment for 15 days.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

24TH JANUARY, 2007